

STROOCK & STROOCK & LAVAN LLP
JULIA B. STRICKLAND (State Bar No. 083013)
MARCOS D. SASSO (State Bar No. 228905)
A.R. KACHADOORIAN (State Bar No. 240601)
2029 Century Park East, Suite 1600
Los Angeles, California 90067-3086
Telephone: 310-556-5800
Facsimile: 310-556-5959
lacialendar@stroock.com

Attorneys for Defendant
CITIBANK (SOUTH DAKOTA), N.A.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

NICK MAKREAS,

Plaintiff,

vs.

THE MOORE LAW GROUP, A.P.C. a
California corporation; CITIBANK (SOUTH
DAKOTA), N.A., a business entity, form
unknown, DOES 1 through 25 INCLUSIVE, et
al.,

Defendants.

Case No. CV 11 2406 MMC

[Assigned to the Honorable Maxine M.
Chesney]

**RENEWED NOTICE OF MOTION OF
DEFENDANT CITIBANK (SOUTH
DAKOTA), N.A. TO DISMISS PURSUANT
TO FEDERAL RULE OF CIVIL
PROCEDURE 12(b)(6)**

Hearing:

Date: *July 29, 2011*

Time: *9:00 a.m.*

Ctrm: *Courtroom 7, 19th Floor*

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on **July 29, 2011**, at **9:00 a.m.**, or as soon thereafter as the matter may be heard before the Honorable Maxine M. Chesney in **Courtroom 7** of the above-entitled court located at 450 Golden Gate Avenue, San Francisco, California, 94102, defendant Citibank (South Dakota), N.A. (“Citibank”) will and hereby does move this Court, pursuant to Federal Rule of Civil Procedure 12(b)(6), for an order dismissing the Complaint (the “Complaint”) filed on May 17, 2011 by plaintiff Nick Makreas (“Plaintiff”) on the following grounds:

First, the First Cause of Action for violation of the federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. (the “FDCPA”), fails as a matter of law because Citibank is not a “debt collector” subject to the FDCPA and is not subject to FDCPA claims under a purported “vicarious liability” theory.

Second, the Second Cause of Action under the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq. (“FCRA”), which is based upon allegations that Citibank supposedly furnished inaccurate information to credit reporting agencies regarding Plaintiff’s Citibank credit card account, fails as a matter of law because Section 1681s-2(a) of the FCRA provides no private right of action for alleged inaccurate credit reporting. Thus, the Second Cause of Action must be dismissed as a matter of law.

Third, the Third Cause of Action under California’s Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788, et seq. (the “Rosenthal Act”), fails on numerous independent grounds: (a) to the extent the claim is based on alleged inaccurate credit reporting, the Third Cause of Action is preempted by the FCRA; (b) Plaintiff fails to allege sufficient factual allegations to state a Rosenthal Act claim; (c) the Rosenthal Act does not permit Plaintiff to recover statutory damages on a per violation basis and, instead, Plaintiff is entitled to a maximum of \$1,000 per action, not per violation, under the Rosenthal Act’s plain language and recent decisions; and (d) the Rosenthal Act claim is barred by the applicable statute of limitations.

Finally, the Fourth Cause of Action for violation of California’s Unfair Competition Law, California Business and Professions Code section 17200, et seq. (the “UCL”), fails because Plaintiff lacks standing to pursue his claim. The Complaint does not include allegations of an

1 identifiable economic injury arising from reliance on an alleged misrepresentation or other act of
 2 unfair competition. In addition, Plaintiff cannot recover “damages” under the UCL as a matter of
 3 law, and the “allegations” underlying the UCL claim are impermissibly vague and, therefore, fail to
 4 state a claim.

5 This Motion is based upon this Notice of Motion and Motion, the Memorandum of Points
 6 and Authorities [Docket Entry No. 4, filed on June 9, 2011], the pleadings and papers on file
 7 herein, all other matters of which the Court may take judicial notice and upon such other or further
 8 material as may be presented at or before the hearing of this matter.

9
 10 Dated: June 16, 2011

Respectfully submitted,

11 STROOCK & STROOCK & LAVAN LLP
 12 JULIA B. STRICKLAND
 13 MARCOS D. SASSO
 14 ALEXANDRIA KACHADOORIAN

15 By: /s/ Alexandria Kachadoorian
 16 Alexandria Kachadoorian

17 Attorneys for Defendant
 18 CITIBANK (SOUTH DAKOTA), N.A.

STROOCK & STROOCK & LAVAN LLP
 2029 Century Park East, Suite 1800
 Los Angeles, California 90067-3086

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN FRANCISCO)

On June 16, 2011, I served the foregoing document(s) described as: **RENEWED NOTICE OF MOTION OF DEFENDANT CITIBANK (SOUTH DAKOTA), N.A. TO DISMISS PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

- Executed on June 16, 2011, at Los Angeles, California.

/s/ *Rennie Santhon*
[Signature]

SERVICE LIST

Nick Makreas
271 Tulare Drive
San Bruno, CA 94066

The Moore Law Group, A.P.C.
Attn: Harvey M. Moore
3710 S. Susan St.
Santa Ana, CA 92704

STROOCK & STROOCK & LAVAN LLP
2029 Century Park East, Suite 1800
Los Angeles, California 90067-3086